IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13178 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

H K SHAHANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13178 of 1993

NOTICE SERVED for Petitioner No. 1

Mr. LR Poojari, AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 02/04/2004

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner has prayed to grant deemed date of seniority to him as on 15.2.1979 in the cadre of Deputy Executive Engineer

(Civil) and to correct their record and grant all consequential benefits available to him flowing from such correction and deemed date.

2. Though served, nobody has appeared on behalf of the petitioner and the matter was adjourned time and again, and, therefore, this Court has no other alternative but to proceed with the matter ex-parte and decide the same on merits on the basis of the materials on record.

3. It is the case of the petitioner that though one Shri T.D. Purohit and one T.D. Patel were juniors to him the said Shri T.D. Purohit was promoted to the post of Deputy Executive Engineer on 28.12.1978 and for that purpose he has relied upon a seniority list by which the name of the petitioner figured at Serial No.454 and his date of appointment is shown as 1.8.1960, whereas the name of Shri T.D. Purohit is figured at Sl. No. 513 and his date of appointment was shown as 7.6.1961. Similarly, name of Shri D.B. Patel was shown at Sl. No. 516 and his date of appointment was mentioned as 8.6.1961. Therefore, it is submitted in the petition that though the petitioner was senior to the aforesaid two persons, the aforesaid two persons came to be promoted earlier than the petitioner. It is the case of petitioner that subsequently on making a representation by making a grievance the mistake was rectified and the petitioner also was promoted by order dated 23rd February 1980 to the post of Deputy EXecutive Engineer. It is also borne out from the record that subsequently the petitioner was also given the benefit of some stepping-up but the same was withdrawn which has not been challenged by the petitioner. It is the case of petitioner that subsequently all throughout the petitioner has made various representations to the department to give him the deemed date of promotion, i.e., from 15.2.1979, the date on which junior to the petitioner was promoted.

4. An affidavit-in-reply has been filed by one HC Kadia, Under Secretary, Narmada Water REsources and Water Supply Department. Shri Poojari, ld. AGP has submitted that the said affidavit is dated 15th February 2001 and he has tendered in the office, but the original affidavit-in-reply is not on record. Therefore, he requested to take the simple copy on the record and that he will see to it that original affirmed copy will be placed on record and in the meantime, the unaffirmed copy is taken on record. In the said affidavit, in Para 5 it is submitted that subsequently the seniority list has been revised and the injustice which was done to the

petitioner was rectified and Shri Purohit as well as Shri D.B. Patel are placed after the name of the petitioner. It is also submitted that after considering the representation submitted by the petitioner dated 28/29.11.1979, the seniority of Shri DB Patel, Supervisor was also revised and he was placed below the petitioner at Sl. No. 681 in the seniority list of Supervisor. It is also further submitted that though Shri TD Purohit and Shri DB Patel were promoted before the petitioner on account of their seniority fixed on the basis of their work charged service, they are now junior to the petitioners and promotion given to them is also fortuitous and therefore the date of their promotion cannot be assigned as a deemed date to the petitioner. It is also further submitted in the said Para that the seniority of the cadre of Supervisor (now Additional Assistant Engineer) was revised by the Government on the temporary establishment by a Government Circular dated 27.2.1984 in which the petitioner stood at Serial No. 308, Shri TD Purohit stood at Sl. No. 301, and Shri DB Patel stood at Sl. No. 313 and thereafter also the seniority list in which the petitioner is shown to be senior than the aforesaid two persons. In view of the aforesaid affidavit-in-reply, now it seems, that the grievance of the petitioner cannot be said to be surviving as the petitioner is shown senior to the aforesaid two persons in the seniority list. Under the circumstances, nothing further is required to be done in the present Special Civil Application as the grievance of the petitioner has already been redressed. In this view of the matter, the present petition is required to be disposed of and is disposed of accordingly. Rule is discharged with no order as to costs.

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mr. [M.R. Shah, J.]